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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

REZA KHOSRAVANI,

Plaintiff,

vs.

MICHAEL CHERTOFF, Secretary,  
Department of Homeland Security, et.  
al.,

Defendants.

CASE NO. 08-CV-0220 W (CAB)

**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS FOR LACK OF  
JURISDICTION (Doc. No. 3)**

On February 5, 2008 Plaintiff Reza Khosravani ("Plaintiff") filed a complaint in mandamus against Defendants Michael Chertoff et. al. ("Defendants") seeking a Court order commanding Defendants to interview Plaintiff and move forward with the processing of Plaintiff's application to become a naturalized United States citizen. (Doc. No. 1.) Pending before the Court is Defendants' motion to dismiss for lack of subject matter jurisdiction, or in the alternative, to remand to the United States Citizenship & Immigration Services ("USCIS"). The Court takes the matter under submission and without oral argument. See S.D. Cal. Civ. R. 7.1(d)(1). For the following reasons, the Court **GRANTS** Defendants' motion and **DISMISSES WITHOUT PREJUDICE** Plaintiff's Complaint in Mandamus. (Doc. No. 3.)

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1 **I. BACKGROUND**

2 Plaintiff Reza Khosravani is a lawful permanent resident of the United States of  
3 America and a native of Iran. (*Compl.* ¶ 1; *Janaki Rangaswamy Decl.* ¶ 19.) Defendants  
4 are a collection of government officials responsible for processing and adjudicating  
5 naturalization applications. (*Compl.* ¶ 3.)

6 On September 20, 2006 Plaintiff filed with USCIS a Form N-400 application to  
7 become a naturalized United States citizen. (*Compl.* ¶ 4.) On September 28, 2006  
8 USCIS requested the Federal Bureau of Investigation ("FBI") to initiate Plaintiff's  
9 background investigation. (*Janaki Rangaswamy Decl.* ¶ 20.) To date, USCIS has not  
10 yet received the results of the FBI background check, and Plaintiff's naturalization  
11 application remains pending. (*Id.*)

12 USCIS states that once it receives Plaintiff's results, it stands ready to interview  
13 Plaintiff and make a final determination on Plaintiff's application. (*Id.* ¶¶ 20-22.) In  
14 the meantime, Plaintiff has inquired many times of Defendants as to the status of his  
15 naturalization application, including several personal letters directed to each  
16 Defendant. (*Compl.* ¶ 5.)

17 On February 5, 2008 Plaintiff filed a complaint in mandamus seeking a Court  
18 order commanding Defendants to interview Plaintiff and move forward with the  
19 processing of Plaintiff's naturalization application. (Doc. No. 1.) On April 7, 2008  
20 Defendants moved to dismiss Plaintiff's complaint for lack of subject matter jurisdiction,  
21 or in the alternative to remand the case to USCIS. (Doc. No. 3.) On May 4, 2008  
22 Plaintiff filed his Opposition. (Doc. No. 4.) On May 12, 2008, per an extension,  
23 Defendants filed their Reply brief. (Doc. No. 7.)

24  
25 **II. LEGAL STANDARD & DISCUSSION**

26 Defendants argue on several grounds that this Court lacks jurisdiction to hear  
27 Plaintiff's Complaint. First, Defendants contend that the Court cannot order USCIS  
28 to conduct Plaintiff's examination because USCIS does not have authority to act until

1 it receives the results of Plaintiff's FBI background check. (*Defs.' Mot.* 2–3.) Next,  
2 Defendants argue that jurisdiction does not attach under the Mandamus Act, 28 U.S.C.  
3 § 1361, because Plaintiff's claims are not clear and certain and Defendants' duties are  
4 not so plainly prescribed as to be free from doubt. (*Defs.' Mot.* 4–5.) Third, Defendants  
5 argue that the Administrative Procedures Act ("APA") does not provide jurisdiction  
6 because the USCIS is not required to act unless and until the FBI completes its  
7 background check. (*Id.* 5–7.) Finally, Defendants contend that because Plaintiff does  
8 not request that the Court issue a writ to protect jurisdiction or effectuate judgment,  
9 the All Writs Act, 28 U.S.C. § 1651, does not provide a basis for exercising federal  
10 jurisdiction. (*Id.* 7–8.)

11 Although Plaintiff's Complaint cites several bases for federal subject matter  
12 jurisdiction, (*Compl.* ¶¶ 1, 3), Plaintiff correctly concedes most of Defendants'  
13 arguments<sup>1</sup> and recognizes that the Court can only entertain jurisdiction through the  
14 Mandamus Act, 28 U.S.C. § 1361. (*Pl.'s Mot.* 2–4.) Plaintiff argues that mandamus is  
15 warranted because the United States government has taken an unreasonable amount  
16 of time (seventeen months and counting) to process his naturalization application;  
17 especially unreasonable given Plaintiff's presence in the country for the last seven years.  
18 (*Id.* 4–5.)

19 The Mandamus Act provides district courts with original jurisdiction of "any  
20 action in the nature of mandamus to compel an officer or employee of the United States  
21 of any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361.  
22 However, the availability of mandamus is limited. See *Cheney v. United States District*  
23 *Court*, 542 U.S. 367, 392 (2004) (Stevens, J., concurring). "Mandamus is an  
24 extraordinary remedy and is available to compel a federal official to perform a duty only  
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26 <sup>1</sup>For instance, Plaintiff correctly recognizes that Defendants are precluded from  
27 proceeding with an applicant interview, as requested by Plaintiff, until completion of the FBI  
28 background check. 8 C.F.R. § 335.2(b). Moreover, 8 U.S.C. § 1421(c) only permits judicial  
review after the USCIS has denied a naturalization application and 8 U.S.C. § 1447(b) permits  
judicial review only after the examination is complete. None of these events have yet occurred  
to empower this court to review Plaintiff's naturalization application or compel Defendants to  
interview Plaintiff.

1 if: (1) the individual's claim is clear and certain; (2) the official's duty is  
2 nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt; and (3)  
3 no other adequate remedy is available. Kildare v. Saenz, 325 F.3d 1078, 1084 (9th Cir.  
4 2003).

5 In this case, Plaintiff's claim is neither clear nor certain because his application  
6 process is ongoing, (*Janaki Rangaswamy Decl.* ¶¶ 20–22), and USCIS and FBI have not  
7 run afoul of any laws requiring that they conduct background investigations in a certain  
8 amount of time. In other words, Defendants have no duty to expedite a background  
9 check because Plaintiff desires immediate results.

10 Moreover, while the USCIS has a nondiscretionary duty to process Plaintiff's  
11 application, government agencies have a fair amount of discretion when it comes to the  
12 procedures and timelines for handling immigration matters. See, e.g., 8 U.S.C.  
13 § 1446(a) (granting Attorney General discretion to waive personal investigation  
14 requirement); c.f. INS v. Aguirre-Aguirre, 526 U.S. 415, 425 (1999) (“[J]udicial  
15 deference to the executive branch is especially appropriate in the immigration context  
16 where officials ‘exercise especially sensitive political functions that implicate questions  
17 of foreign relations.’”). Although Plaintiff reads in a “reasonable amount of time”  
18 element to the statutory scheme, (*Pl.’s Opp’n* 4), Plaintiff has produced  
19 nothing—except his own impatience—suggesting that a seventeen month wait is  
20 unreasonable as a matter of law and, even then, deserving of the extraordinary writ of  
21 mandamus.<sup>2</sup> Because USCIS is already fulfilling and stands ready to continue fulfilling  
22 its every obligation under the law, Plaintiff shall have his requested remedy once the  
23 FBI completes its background investigation. Accordingly, Plaintiff is not entitled to a  
24 writ of mandamus and the Court **GRANTS** Defendants’ motion and **DISMISSES**  
25 **WITHOUT PREJUDICE** Plaintiff’s complaint in mandamus.

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27 <sup>2</sup>This is not to say that the Court does not appreciate Plaintiff’s desire to become a  
28 naturalized United States citizen, and applaud the efforts Plaintiff has made in order to  
diligently shepherd his application through the naturalization process. Unfortunately, however,  
the Court can only act and provide relief where a plaintiff has satisfied his burden of proving  
a violation of law. Therein lies the difficulty in granting Plaintiff’s requested relief.

1 **IV. CONCLUSION**

2 Both Plaintiff and Defendants agree that the laws involving naturalization  
3 applications preclude judicial review until after the USCIS has interviewed Plaintiff.  
4 Both parties also agree that, by law, USCIS cannot interview Plaintiff until the FBI  
5 completes its background investigation. Unfortunately, Plaintiff has not shown that  
6 this Court enjoys the power to order a background investigation or order Defendants  
7 to interview Plaintiff without first receiving the results of his FBI background check.  
8 Under the totality of the circumstances, a writ of mandamus compelling Defendants to  
9 perform any of the above actions in contrivance of law would be improper. Because  
10 Defendants have shown that Plaintiff's application has been timely processed and is  
11 currently pending an FBI name check, the Court **GRANTS** Defendants' motion to  
12 dismiss and **DISMISSES WITHOUT PREJUDICE** Plaintiff's complaint in mandamus.

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14 **IT IS SO ORDERED.**

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16 Dated: May 12, 2008

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18 **Hon. THOMAS J. WHELAN**  
19 United States District Court  
20 Southern District of California  
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